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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Ms. J.P., et al.,

Plaintiffs,

v.

Merrick B. Garland,

U.S. Attorney General, et al.,

Defendants.

Case No. 2:18-cv-6081-JAK-SK

**PLAINTIFFS' UNOPPOSED EX
PARTE APPLICATION FOR
CLARIFICATION OR IN THE
ALTERNATIVE FOR RELIEF
FROM JUDGMENT**

Judge: Hon. John A. Kronstadt

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purposes only
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1 **TO THE CLERK OF THE CENTRAL DISTRICT COURT OF THE**
2 **STATE OF CALIFORNIA AND TO DEFENDANTS AND THEIR**
3 **ATTORNEYS OF RECORD:**

4 **PLEASE TAKE NOTICE THAT** Plaintiffs hereby apply *ex parte*, for
5 clarification of the Order Re Stipulation of Dismissal and confirmation that Plaintiffs
6 retain the right to seek attorneys' fees and costs pursuant to the Equal Access to
7 Justice Act ("EAJA"), which authorizes attorneys' fees and costs incurred by a party
8 in a civil action against the United States. 28 U.S.C. § 2412. In the alternative,
9 Plaintiffs seek *ex parte* relief from the Order Re Stipulation of Dismissal pursuant to
10 Rule 60 of the Federal Rules of Civil Procedure in the event of a clerical mistake.
11 Fed. R. Civ. P. 60.

12 **PURSUANT TO LOCAL RULE 7-19**, attached to this *ex parte* application is
13 a memorandum of points and authorities containing the name, address, telephone
14 number and e-mail address of counsel for Plaintiff, the reasons for the seeking of an *ex*
15 *parte* order, and points and authorities in support thereof. In addition, Defendant is
16 concurrently lodging a proposed *ex parte* order for the relief requested.

17 **PURSUANT TO LOCAL RULE 7-19.1**, Defendant hereby states that, on
18 January 19, 2024, Plaintiffs' counsel advised Defendants' counsel by email of the
19 substance of the proposed *ex parte* application with follow-up email communications
20 between counsel for the parties that same day. Defendants' counsel advised by email
21 that Defendants are unopposed to the present *ex parte* application.

22 **PLEASE TAKE FURTHER NOTICE** that, pursuant to the Court's Standing
23 Order, Plaintiffs' counsel telephones Defendants' counsel in advance of this filing and
24 advised that if Defendants' counsel does not intend to oppose the *ex parte* application,
25 counsel must inform the Courtroom Deputy Clerk by telephone as soon as possible.
26
27
28

Date: January 22, 2024

Respectfully submitted,

By: /s/ Amy Lally

Amy P. Lally (SBN 198555)
SIDLEY AUSTIN LLP

Mark Rosenbaum (SBN 59940)
PUBLIC COUNSEL

Attorneys for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Local Rule 7-19, Plaintiffs respectfully submit this Memorandum in support of the Unopposed *Ex Parte* Application for Clarification or in The Alternative For Relief From The Judgment. Plaintiffs are entitled to seek an award of reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act ("EAJA"), which authorizes the award of attorneys' fees and costs incurred by a party in a civil action against the United States. 28 U.S.C. § 2412. The parties in this case agreed to file a stipulation for dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(ii) reserving Plaintiffs' right to file a motion for attorneys' fees and costs. ECF No. 334. The parties engaged in good faith negotiations and filed the Stipulation of Dismissal on December 22, 2023. EFC No. 337. In consideration for release and discharge of all claims and causes of action against Defendants, Plaintiffs expressly reserved the right to file a motion for attorneys' fees and costs in connection with this litigation. *Id.* at ¶ 3. On January 17, 2024, the Court determined "sufficient good cause has been shown for the requested relief" and deemed the Stipulation "APPROVED." EFC No. 338. However, contrary to the Stipulation of Dismissal, the Court ordered that "[e]ach party is to bear its own fees and costs." EFC No. 338.

Plaintiffs respectfully request that the Court clarify the Order to confirm that Plaintiffs retain the right to file a motion for attorneys' fees and costs in connection with this litigation. Alternatively, Plaintiffs respectfully requests relief from the final judgement, pursuant to Rule 60(b)(6) on the basis of an inadvertent clerical mistake. Fed. R. Civ. P. 60(b)(6). The present *ex parte* Application is necessary because there is inadequate time to request relief on a noticed motion and thereafter timely file a motion for fees and costs pursuant to the EAJA. Defendants have stipulated to Plaintiffs' right to file a motion for attorneys' fees and costs in connection with this litigation. EFC No. 337 ¶ 3. Furthermore, Defendants have advised that they will not

1 oppose the present *ex parte* Application. Declaration of Amy P. Lally (“Lally Decl.”),
2 ¶¶ 2-3.

3 Thus, Plaintiffs respectfully requests that the Application for Clarification or in
4 The Alternative For Relief From Judgement be deemed filed and that the Application
5 be considered.

6 **II. GROUND FOR APPLICATION**

7 Good cause exists to permit Plaintiffs to file its Unopposed *Ex Parte*
8 Application for Clarification or in The Alternative For Relief From Judgment. A party
9 in a civil action against the United States, is entitled to seek an award of reasonable
10 attorneys’ fees and costs unless the position of the United States was “substantially
11 justified” or special circumstances make an award unjust. *See* 28 U.S.C. §
12 2412(d)(1)(A); *see also Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2013). The
13 parties stipulated to Plaintiffs “right to file a motion for attorneys’ fees and costs in
14 connection with this litigation.” EFC No. 337, ¶3. However, the Courts’
15 determination that “[e]ach party is to bear its own fees and costs” introduces
16 ambiguity into the Court’s approval of the Stipulation that merits correction. EFC No.
17 338. Clarification of the Order is proper to conform the Court’s approval of the
18 Stipulation of Dismissal to the language of the Stipulation of Dismissal, which
19 preserved Plaintiffs’ right to seek attorneys’ fees and costs. *Compare* EFC No. 338,
20 *with* EFC No. 337, ¶3. Alternatively, relief from the final judgement is proper where,
21 as here, there is a clerical mistake in a judgement arising from oversight or omission
22 in the Order, such that the Order does not incorporate all terms of the underlying
23 Stipulation.

24 *Ex parte* relief is necessary to timely file a motion for fees. Under the EAJA, a
25 party must request fees within thirty days of final judgment. 28 U.S.C. 2412(d)(1)(B).
26 An order entered upon a stipulation of voluntary dismissal with prejudice is “final, not
27 appealable, and triggers the thirty-day clock” to request fees. *Bair v. California Dept.*
28

1 *of Transportation*, Case No. C 14-03422 WHA, 2015 WL 1516913, at *2 (N.D. Cal.
2 Mar. 31, 2015), *aff'd*, 685 Fed. Appx. 546 (9th Cir. 2017) (citing *Bryan v. Office of*
3 *Personnel Management*, 165 F.3d 1315, 1320–21 (10th Cir.1999)). Final judgement
4 was entered in the present litigation on December 17, 2024 (EFC No. 338) and *ex*
5 *parte* relief is necessary to timely file a motion for fees on or before the February 19,
6 2024, deadline.

7 Defendants will not be prejudiced by the present Application because the
8 parties have bargained in good faith and received valuable consideration for Plaintiffs'
9 reservation of the right to seek attorneys' fees in accordance pursuant to the EAJA. 28
10 U.S.C. § 2412(b). To the contrary, granting the Application is necessary to avoid any
11 potential prejudice to Plaintiffs because failure to do so would preclude Plaintiffs from
12 exercising their right to seek reasonable attorneys' fees, expenses under the EAJA. *Id.*

13 Thus, good cause exists for Plaintiffs' *ex parte* application for clarification of
14 Plaintiffs' right to file a motion for attorneys' fees and costs pursuant to 28 U.S.C. §
15 2412, or in the alternative, for relief from the judgement pursuant to Rule 60 of the
16 Federal Rules of Civil Procedure.

17 **III. CONTACT INFORMATION FOR PLAINTIFF'S COUNSEL**

18 Pursuant to Local Rule 7-19, the names, address, telephone numbers, and email
19 addresses of Plaintiff's counsel are as follows:

20 Sarah B. Fabian
21 Senior Litigation Counsel
22 U.S. Department of Justice
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1 **IV. CONCLUSION**

2 Based on the foregoing, Plaintiffs respectfully requests that the Court correct
3 the inadvertent clerical error, or in the alternative grant relief from the judgement and
4 enter the [Proposed] Order Granting Defendant's *Ex Parte* Application, which will
5 allow Plaintiffs to timely file a motion for attorneys' fees and costs.

6
7 Date: January 22, 2024

Respectfully submitted,

8
9 By: /s/ Amy Lally

10 Amy P. Lally (SBN 198555)
11 SIDLEY AUSTIN LLP

12 Mark Rosenbaum (SBN 59940)
13 PUBLIC COUNSEL

14 *Attorneys for Plaintiffs*
15

16
17 **CERTIFICATE OF COMPLIANCE PURSUANT TO L.R. 11-6.2**

18 The undersigned, counsel of record for Plaintiffs certifies that this brief contains
19 970 words, which complies with the word limit of L.R. 11-6.1.

20
21 Date: January 22, 2024

Respectfully submitted,

22
23 By: /s/ Amy Lally

24 Amy P. Lally (SBN 198555)
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Attorneys for Plaintiffs